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In the Supreme Court of the United States

VISION CHURCH, UNITED METHODIST, THE NORTHERN ILLINOIS CONFERENCE OF THE UNITED METHODIST CHURCH, AND HEE-SOO JUNG, PRESIDING BISHOP, PETITIONERS

v.

VILLAGE OF LONG GROVE, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a land-use regulation must make religious uses or practices "effectively impracticable" to constitute a "substantial burden" on religious exercise for purposes of the Religious Land Use and Institutionalized Persons Act or the Free Exercise Clause?

2. Whether a land-use regulation that treats religious uses differently from nonreligious uses can escape RLUIPA's "equal terms" requirement, even when the two uses create comparable community impacts, simply because the land-use authority has chosen to subject religious uses to a different legal regime?

3. Whether an equal protection challenge to a land-use regulation that interferes with uses protected by the First Amendment, such as religious uses, must be analyzed under the same minimal "rational basis" scrutiny as economic regulations implicating no fundamental rights?

PARTIES TO THE PROCEEDINGS

Petitioner Vision Church, United Methodist was the plaintiff-appellant in the court below. Petitioner the Northern Illinois Conference of the United Methodist Church and Hee-Soo Jung, its Presiding Bishop, were intervenor-appellants below. Respondent the Village of Long Grove was the defendant-appellee below. There are no other parties.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDINGS ii

TABLE OF AUTHORITIES v

INTRODUCTION 1

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL & STATUTORY PROVISIONS 2

STATEMENT 2

REASONS FOR GRANTING THE PETITION 11

I. Review Is Needed To Resolve A Circuit Conflict Over The Standard For Determining When A Law Imposes A "Substantial Burden" On Religious Exercise. 11

II. Review Is Needed To Provide Guidance On When A Regulation Treats A Religious Use On "Less Than Equal Terms" Than A Nonreligious Use. 19

III. Review Is Needed To Clarify The Standard For Assessing Equal Protection Challenges To Laws That Discriminate Against And Among Religious Uses. 21

IV. The Questions Are Of Immense Practical Importance To Churches, Local Governments, and Federal Policy. 27

CONCLUSION 30

APPENDIX A 1a

APPENDIX B 30a

APPENDIX C 79a

APPENDIX D 80a
APPENDIX E 82a
APPENDIX F 83a
APPENDIX G 84a

TABLE OF AUTHORITIES

Page(s)

CASES:

Church of the Lukumi Babalu Aye, Inc. v. *City of Hialeah*, 508 U.S. 520 (1993) 17

City of Cleburne v. *Cleburne Living Center*, 473 U.S. 432 (1985) 21, 23-24, 26

Civil Liberties for Urban Believers v. *City of Chicago*, 342 F.3d 752 (7th Cir. 2003) 22-23

Congregation Kol Ami v. *Abington Township*, 309 F.3d 120 (3d Cir. 2002) 23-25

Cornerstone Bible Church v. *City of Hastings*, 948 F.2d 464 (8th Cir. 1991) 22-23

Employment Division v. *Smith*, 494 U.S. 872 (1990) 17

First Covenant Church v. *City of Seattle*, 840 P.2d 174 (Wash. 1992) 14, 16-17, 29

Fraternal Order of Police Newark Lodge No. 12 v. *City of Newark*, 170 F.3d 359 (3d Cir. 1999) 17

Guru Nanak Sikh Soc'y v. *County of Sutter*, 456 F.3d 978 (9th Cir. 2006) 13-16

Islamic Center of Mississippi, Inc. v. *City of Starkville*, 840 F.2d 293 (5th Cir. 1988) 16

Konikov v. *Orange County*, 410 F.3d 1317 (11th Cir. 2005) 20

Marks v. *Chesapeake*, 883 F.2d 308 (4th Cir. 1989) 24-25

Midrash Sephardi, Inc. v. *Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004) 13, 21

Orthodox Minhan v. *Cheltenham Twp. Zoning Hearing Bd.*, 552 A.2d 772 (Pa. Commw. Ct. 1989) 27

Rector, Wardens & Members of Vestry v. *City of New York*, 914 F.2d 348 (2d Cir. 1990) 12

Sherbert v. *Verner*, 374 U.S. 398 (1963) 17-19

Thiry v. *Carlson*, 78 F.3d 1491 (10th Cir. 1996) 14

Thomas v. *Review Board*, 450 U.S. 707 (1981) 16-19

Village of Euclid v. *Ambler Realty Co.*, 272 U.S. 365 (1926) 11

Westchester Day Sch. v. *Vill. of Mamaroneck*, 386 F.3d 183, 188 (2d Cir. 2004) 13

STATUTES:

42 U.S.C. § 2000bb 12, 17

42 U.S.C. § 2000cc(a)(1) 2, 19

42 U.S.C. § 2000cc(b)(1) 2, 19

MISCELLANEOUS:

146 Cong. Rec. S7774 (daily ed., July 27, 2000) 27, 29

H.R. Rep. No. 106-219 (1999) 27-28

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INTRODUCTION

This case gives the Court an opportunity to address conflicts and tensions among the courts of appeals on three important questions of statutory and constitutional interpretation involving religious land use. The first involves the meaning of "substantial burden"—a critical term in the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc ("RLUIPA"), which Congress passed unanimously, and which is of great importance to the federal government's own efforts to protect civil liberties today. The second question involves the interpretation of the "equal terms" provision in RLUIPA. And the third focuses on the level of equal protection scrutiny that courts must apply to land-use regulations that interfere with religious exercise. Because religious communities regularly experience unequal treatment at the hands of municipal governments—discrimination vividly on display in this case—all three questions are of enormous practical importance to thousands of religious congregations nationwide, and to the governments that regulate their use of land.

OPINIONS BELOW

The opinion of the district court, as amended, is reprinted in the appendix to this petition ("Pet. App.") at 1a-29a, and is reported at 397 F. Supp. 2d 917 (N.D. Ill. 2005). The Seventh Circuit's opinion affirming the decision of the district court (Pet. App. 30a-78a) is reported at 468 F.3d 975 (7th Cir. 2006). The Seventh Circuit's order denying rehearing *en banc* (Pet. App. 79a) is unreported.

JURISDICTION

The opinion of the court of appeals was entered on November 7, 2006, and the order of the court of appeals denying petitioners' petition for rehearing *en banc* was entered on January 10, 2007. By order of March 20, 2007, this Court granted petitioners' request for an extension of time

until May 10, 2007, within which to file this petition. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL & STATUTORY PROVISIONS

This petition involves not only the First and Fourteenth Amendments, but also Section 2 of RLUIPA. The relevant portions of Section 2 provide that:

> (1) "[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution . . . is in furtherance of a compelling governmental interest . . . and . . . is the least restrictive means of furthering that compelling governmental interest," 42 U.S.C. § 2000cc(a)(1), and
>
> (2) "[n]o government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution," *id.* § 2000cc(b)(1).

STATEMENT

Vision Church, United Methodist ("Vision"), is a Korean-American congregation located in suburban Chicago. Organized more than 25 years ago on Chicago's north side, by 1999 Vision had outgrown its building, and most of its 300 members had moved to suburban Lake County, Illinois. Under the leadership of its pastor, Rev. Soon-Chang Jang, Vision undertook a building campaign and hoped to build a new church in the Village of Long Grove, an 18-square-mile village of suburban estate homes, forest areas, and farmland located in Lake County. Jang met several times with Long Grove's City Manager to discuss Vision's interest in finding property. The Manager advised Jang that Long Grove would not permit construction of a church

on the first two properties they discussed, and the owners of a third refused to sell. Eventually, the Manager and Jang agreed on a fourth property, which the Manager said was "the best place to build a church in Long Grove." Vision purchased that parcel, nearly 30 acres of vacant land in unincorporated Lake County adjoining Long Grove. The parcel was surrounded on two sides by farmland, on a third by homes on five-acre lots, and on a fourth (across a county highway) by a complex housing two public schools.

Vision's Application to Long Grove. The Manager told Jang to submit a long-range plan describing all the development Vision might wish to make on the property. Vision complied, and sought to have the property annexed into the Village. Although Vision had an absolute right, under Lake County's permissive zoning laws, to build a church *outside* the Village, Vision hoped to become a more integral part of the Village and believed annexation would further that goal. Along with its application for annexation, Vision asked that its land be zoned as "residential" and sought a special use permit—both requirements for building a church anywhere in Long Grove.

In all material respects (except for being much smaller), Vision's special use proposal was identical to proposals filed by the local school district for an enormous school complex across the street from Vision's land. Less than one year before Vision bought its property, the school district built a 172,000 square-foot structure that houses a middle school and an elementary school and serves over 1,000 students. Like Vision, the school district had approached Long Grove for annexation, residential zoning, and a special use permit. Long Grove promptly, unanimously, and without a hearing granted all three requests. The school complex is the largest structure in Long Grove. — See Pet. App. 84a (aerial photograph of Vision land and school complex). It includes 377,802 square feet of impervious surfaces (buildings, paved parking, and sidewalks) on 73 acres, for an impervious surface ratio of 11.9%.

Because the Long Grove Zoning Ordinance had no zone in which houses of worship were a permitted use, Vision had to go through the Village's special use permit process. That process gave the Village discretion to grant or deny a permit on virtually any ground, including "public convenience"; "public welfare"; "injury to the value of other property"; conformity with "applicable regulations of the district"; and ability "to complete the project as proposed . . . to the satisfaction of the village." Pet. App. 82a

As the Manager had advised, Vision's proposal represented its long-term goals. Although the plan, if completed, would have produced extensive facilities, those facilities would have remained far smaller than the facilities located on the school property across the street. The Vision plan included a 1,200-seat main sanctuary, an education and administration building, a youth sanctuary and day-care building, a small chapel, a fellowship building with basketball courts, a missionary retreat building, a custodial residence, an outdoor amphitheater, a fountain, a combined soccer/softball athletic field, tennis courts, and parking for approximately 400 vehicles.

The plan complied with every measurable standard in the Village's zoning ordinance, including all density, safety, drainage, setback, and other requirements. The buildings would occupy a maximum of 99,000 square feet with a total of 123,483 square feet of impervious surfaces (buildings, parking, and sidewalks) on 27 acres, for an impervious surface ratio of 10.3%—less than the 11.9% approved for the school complex, and far less than the 40% permitted under the zoning ordinance. Pl.'s Mot. Summ. J., Am. Stmt. of Facts, p. 16, ¶ 69.

During public hearings on Vision's proposal, it became clear that Vision, a Korean-American congregation, and its plan were viewed by local residents with suspicion and hostility, and some remarks had racial overtones. In the end, the Village imposed a series of some *fifty* conditions on approval, including that Vision:

- be more like a "nice traditional country church";
- reduce the size of the church to "one like Commissioner Walter attends";
- devote 85% of the property to open space (25% more than the Village zoning ordinance required);
- remove the playing field, youth sanctuary, and day care center;
- reduce the sanctuary seating, first to 1,000, then to 600, and then to 500;
- reduce parking spaces from 400 to 240;
- reduce the impervious surfaces (parking, roofs, sidewalks, other paving) from 175,408 square feet to 59,000 square feet; and
- remove the chapel, fountain, and outdoor amphitheater and replace them with a "meditation rock."

Pl.'s Mot. Summ. J., Book of Exs., Tabs 22, 56-57 ("Tab").

Reluctantly, Vision agreed to meet all of these conditions and many more. It also agreed, at Long Grove's request, to reduce the size of its original proposal from 99,000 square feet of floor space with 123,483 square feet of impervious surfaces, to 56,200 square feet of floor space with 80,683 square feet of impervious surfaces. This reduced the impervious surface ratio from 10.3% to 6.75%, again far less than either the schools (11.9%) or the maximum permissible under the zoning ordinance (40%). The only conditions that Vision did *not* agree to were:

- that Vision grant the Village an easement prohibiting all "future structures or impervious parking" on Vision's property;
- that a playing field that Vision intended to use for its youth outreach be marked "Natural Landscaped Area . . . and no organized outside activities . . . be allowed in the area"; and, most importantly,
- that "[o]nly two services [be held] on Sunday or holidays[,] except weddings and funerals, [a]nd no more than one major activity each week Monday through

> Friday except weddings and funerals"; and that "[a]ll other major activities or special events other than those listed as part of the regular activities and programs . . . shall require Village Board approval."

Pet. App. 33a-34a; Tabs 56-57.

Despite Vision's many concessions, and without making any findings after six heated public hearings, the Village denied Vision's permit application. *Id.* at 34a.

Long Grove's Forcible Annexation and Rezoning of Vision's Property. While Vision's first application to Long Grove was still pending, Vision also applied for a building permit under Lake County's permissive zoning regime. In 2001, Lake County informed Long Grove of the pending approval of Vision's permit application.

The Village interrupted that process, however, by reversing its prior stance and forcibly annexing and rezoning Vision's land. When the Village rejected Vision's initial petition, it knew that Lake County's rules allowed churches to locate anywhere and that it could not, without annexation, stop Vision from building. As the Village planner wrote to the Manager and the Plan Commission, "[Vision's] land is not in the Village, and the Village must annex to have any significant control." Tab 69.

Thus, in a turnabout requiring several elaborate steps, Long Grove forcibly annexed and rezoned Vision's property. First, because Illinois law allows forcible annexation only if the property is surrounded by property within a municipality's corporate boundaries, 65 ILCS 5/7-1-13, the Village had to annex all of the non-Village land surrounding Vision. This land consisted of a large, 120-acre tract (more than four times the size of Vision's property) owned by a private developer. The city fast-tracked approval of this annexation and "residential" rezoning, effectively opening the door for development of 120 acres of previously vacant land behind Vision's property.

Second, without informing Vision of its plans, Long Grove passed an ordinance forcibly annexing Vision's

property. This had the effect of cutting off Vision's petition to Lake County for a building permit, because the County no longer had jurisdiction over the matter. When the Village annexed Vision, Vision was roughly *two weeks* away from site plan approval by Lake County. Tab 64 at 18-19. Finally, the Village rezoned Vision's property as "residential"—and thereby ensured that a special use permit would be required for construction of any church.

Having thus been brought under Long Grove's authority and foreclosed from building its church, as was its right under Lake County's zoning regime, Vision reapplied to Long Grove for a special use permit similar to its original proposal. Pet. App. 37a.

The Assembly Ordinance. After forcibly annexing and rezoning Vision's property, and shortly after Vision had reapplied for a special use permit, Long Grove enacted an ordinance (the "Assembly Ordinance" or "Ordinance") restricting the size and capacity of buildings used for "public assembly." The buildings covered by the Ordinance were "religious institutions, aquariums, libraries, museums, private schools, and other similar uses," although the only use Long Grove ever investigated was that of religious institutions. The Ordinance provided that a complex made up of three or more buildings and located on 15 or more acres could not exceed 55,000 square feet—unless it fronted a state highway. The Ordinance did not cover public schools.

According to the Village planner, Long Grove specifically *targeted* the Ordinance at Vision. For example, the planner circulated a memorandum showing that an early draft of the Ordinance left Vision room to expand. To remedy this "shortcoming," the next draft limited building space for a community facility to 55,000 square-feet, just under the 56,200 square-feet that Vision previously proposed. The revised ordinance, which ultimately was enacted, also required that any non-profit public assembly building in excess of 55,000 square feet front on a state

highway. Vision fronts on a county road. Pet. App. 36a, 83a.

In July 2002, without giving any reasons, but presumably on the basis of the newly enacted Ordinance, the Village unanimously rejected Vision's application.

Because of Long Grove's actions, by 2003 Vision had spent three years without the use of its property and without the ability to fully serve its members and the community. Instead of growing to more than 500 members, as projected, Vision's congregation dropped from 300 to 120. Appellant's Br., Short App. at 112. As a result, Vision's revenues also dropped, and more than 15 different ministries were cancelled or severely curtailed. *Id.* at 70-73. Because of the delay, the cost of building Vision's church increased by several hundred thousand dollars. And Vision incurred over $400,000 in expenses in the multiple zoning proceedings before Long Grove and Lake County. Vision's land stands empty today.

Court Proceedings. After more than three years of rule changes, resistance, and rejection, Vision filed suit alleging, among other things, violations of RLUIPA, the Free Exercise Clause, and the Equal Protection Clause. Invoking RLUIPA's "substantial burden" provision, Vision argued that it was substantially burdened by the more than 50 conditions the Village placed on its special use permit, by three years of delay and uncertainty, by more than $400,000 spent in multiple zoning proceedings, by the forcible annexation and rezoning of its property, and by passage of the Ordinance targeting its development efforts. Vision also argued that the Village violated RLUIPA by treating it on "less than equal terms" than the massive public school complex across the street, and violated the Equal Protection Clause by passing the Ordinance and denying Vision a special use permit in circumstances in which such permits had been granted to others.

The district court granted summary judgment to the

Village on all claims. The court reasoned that Vision did not face a substantial burden because it could have submitted a new application complying with the Ordinance's size restrictions. Pet. App. 19a. The court concluded that Vision failed to establish an equal terms claim because it failed to identify a nonreligious group that had received more favorable treatment. And on the equal protection claim, the court reasoned that the Ordinance was subject only to rational basis review—because it was "facially neutral and generally applicable"—and that it was rationally related to the Village's "stated planning goals . . . for a quiet countryside, with an unhurried environment where families can enjoy the open space." *Id.* at 24a.

The Seventh Circuit affirmed. Consistent with its precedent, the Court defined "substantial burden" as one that "bears direct, primary, and fundamental responsibility for rendering religious exercise—including the use of real property for the purpose thereof within the regulated jurisdiction generally—*effectively impracticable*." *Id.* at 62a-63a (emphasis added). The court concluded that none of the burdens alleged by Vision met this standard.

Specifically, the Court held that the size restriction was not a substantial burden because a 55,000 square-foot facility could accommodate Vision's then-current complement of 120 members. *Id.* at 67a-68a. The court rejected Vision's claims based on delay, expense, and general uncertainty on similar grounds. *Id.* at 63a-64a n.22. And although the court acknowledged that the restrictions on the number and types of religious services were "more troublesome," it concluded that they were insignificant because in its view the Assembly Ordinance, not the restrictions on services, were the *final* grounds for Vision's denial. *Id.* at 66a.[1] In so concluding, the Court simply as-

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[1] According to the Court, the forcible annexation was irrelevant under RLUIPA because it was not a "land use regulation," which

sumed that Vision would have received approval for a 55,000-square foot complex, even though the Village had just denied Vision's 56,200-square foot proposal (2% larger), and even though the Village retained discretion under the Assembly Ordinance to reject a smaller proposal on the grounds of "public convenience," "public welfare," "injury to the value of other property in the neighborhood," and ability "to complete the project as proposed . . . to the satisfaction of the village." *Id.* at 82a.

On the equal terms claim, the Court held that because the Village had approved the school complex *before* adopting the Ordinance, "Vision and the elementary schools were subject to different standards," and thus there was no unequal treatment under RLUIPA. *Id.* at 74a.

On the equal protection claim, the Court applied bare rational basis scrutiny. The court declared that "Vision must demonstrate [1] governmental action wholly impossible to relate to legitimate governmental objectives," *and* "[2] malicious conduct . . . or conduct that evidences a spiteful effort to 'get' [Vision] for reasons wholly unrelated to any legitimate state objective." Pet. App. 70a (quotation omitted). Applying this standard, the Court held that the Village acted rationally in granting the adjacent schools' special use permit while denying Vision's. "At the time that Village addressed Vision's special use application," the Court stated, "it already had passed the Assembly Or-

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RLUIPA defines as "a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land." *Id.* 64a (quoting 42 U.S.C. § 2000cc-5(5)). Assuming *arguendo* that annexation is not itself "land use regulation," the subsequent rezoning and application of the Village zoning ordinance are certainly land use regulations, and the Seventh Circuit simply ignored these. Moreover, the Seventh Circuit "collapse[d]" its RLUIPA and free exercise analysis, ignoring the fact that the Free Exercise Clause is not limited by RLUIPA's definition of "land use regulation." *Id.* at 61a-62a.

dinance." *Id.* at 71a-72a. Thus, "to deny Vision's application because it failed to submit plans that complied with these restrictions is rationally related to the goals reflected in the Assembly Ordinance." *Id.* at 72a.

REASONS FOR GRANTING THE PETITION

Since *Village of Euclid* v. *Ambler Realty Co.*, 272 U.S. 365 (1926), federal and state courts have decided hundreds of suits by synagogues, churches, or mosques challenging municipal zoning laws and decisions. This case presents critical statutory and constitutional questions that arise in many such cases and on which the courts of appeals (and at least one state supreme court) are divided. These conflicts and tensions reflect fundamental disagreements over the proper interpretation of RLUIPA and this Court's constitutional decisions, and the uncertainty these conflicts create has an enormous practical impact on churches and local governments throughout the Nation. The issues presented also implicate the long-standing federal policy, reflected in RLUIPA itself, of reducing religious discrimination by local governments—governments that are sometimes more responsive to the biases of local majorities than to the ideal of tolerance for minorities reflected in the First and Fourteenth Amendments.

I. Review Is Needed To Resolve A Circuit Conflict Over The Standard For Determining When A Law Imposes A "Substantial Burden" On Religious Exercise.

The Seventh Circuit's opinion on the meaning of "substantial burden" widens an existing conflict between those courts of appeals that, like the Seventh Circuit, require a showing that religious practice was made "effectively impracticable" and those that merely require a showing that religious practice was made significantly more difficult. This Court's guidance is badly needed to resolve this important question of federal law, which arises frequently in

the application not only of RLUIPA, but also of the Free Exercise Clause and the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb *et seq.* This Court has never provided guidance on the meaning of "substantial burden" in the land-use context, and the circuit courts have developed widely varying definitions based on a pair of 25-year-old employment decisions from this Court.

1. The decision below deepens a square circuit conflict on this important question. On the one hand, following earlier Seventh Circuit RLUIPA precedents and Second Circuit decisions interpreting the Free Exercise Clause (which provided the forerunner for the RLUIPA standard), the court below set an extraordinarily high threshold for finding that government action substantially burdens religion. It defined "substantial burden" as a burden that "bears direct, primary, and fundamental responsibility for rendering religious exercise—including the use of real property for the purpose thereof within the regulated jurisdiction generally—*effectively impracticable*." Pet. App. 62a-63a (emphasis added).[2] Vision, like every other religious group to which the Seventh Circuit or any district court has applied this test, failed to establish a substantial burden. According to the court, "Vision was free to submit

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[2] This is essentially identical to the Second Circuit's standard under the Free Exercise Clause. Reasoning that the "central question in identifying an unconstitutional burden is whether the claimant has been *denied the ability* to practice his religion or coerced in the nature of those practices," a panel of that court concluded that there can be no "substantial burden" absent "coercion in religious practice, or the Church's *inability* to carry out its religious mission in its existing facilities." *Rector, Wardens & Members of Vestry* v. *City of New York*, 914 F.2d 348, 355 (2d Cir. 1990) (emphasis added). Accordingly, even though the landmarking law at issue in *Rector, Wardens & Vestry* "drastically restricted [a] Church's ability to raise revenues to carry out its various charitable and ministerial programs" by building an office tower, no substantial burden was shown.

modified plans to the Board" that "could have" satisfied the Board, and therefore the Board had not rendered Vision's religious exercise impossible. Pet. App. 69a (citing *Westchester Day Sch.* v. *Vill. of Mamaroneck*, 386 F.3d 183, 188 (2d Cir. 2004)).

In contrast to this stringent approach, several circuits (and at least one state supreme court) have taken a more moderate view. These courts have recognized that burdens fall along a continuum between those that make a religious practice virtually impossible and those that are merely trivial inconveniences, and that middle-ground obstacles may constitute "substantial burdens" on religion for purposes of RLUIPA, just as more extreme burdens do.

Most significantly, the Eleventh and Ninth Circuits have explicitly repudiated the Seventh Circuit's definition of "substantial burden." See *Midrash Sephardi, Inc.* v. *Town of Surfside*, 366 F.3d 1214, 1227 (11th Cir. 2004) ("declin[ing] to adopt [that] definition"); *Guru Nanak Sikh Soc'y* v. *County of Sutter*, 456 F.3d 978, 989 n. 12 (9th Cir. 2006). Looking to this Court's *Sherbert* line of cases (see *infra* at 17-18) the Eleventh Circuit has held that a substantial burden merely "requires something more than an incidental effect on religious exercise," such as "pressure that tends to force adherents to forgo religious precepts." 366 F.3d at 1277. Indeed, the court in *Midrash Sephardi* openly criticized the Seventh Circuit's rule as "render[ing] [RLUIPA's] total exclusion prohibition meaningless." *Ibid.*

Similarly, the Ninth Circuit, drawing on dictionary definitions of "substantial" and "burden," has held that a substantial burden is one that is "'oppressive' to a 'significantly great' extent," or "impose[s] a significantly great restriction or onus upon [religious] exercise." *Guru Nanak*, 456 F.3d at 988-989 (quotation omitted). The court expressly acknowledged that such a definition of substantial burden is "more lenient" than the Seventh Circuit's "narrower definition of that phrase." *Id.* at 989 n.12.

Numerous other courts have adopted definitions of "substantial burden" that conflict with the Seventh Circuit's. Because those courts addressed the "substantial burden" inquiry before the Seventh Circuit adopted its restrictive definition, however, they did not have the opportunity to repudiate it expressly. See, *e.g.*, *Thiry* v. *Carlson*, 78 F.3d 1491, 1495 (10th Cir. 1996) (concluding that a substantial burden is one that has a "*tendency* to coerce individuals into acting contrary to their religious beliefs," or one that "significantly inhibit[s] or constrain[s]," "meaningfully curtail[s]," or denies "reasonable opportunities" for religious practice) (emphasis added; internal quotations omitted); *First Covenant Church* v. *City of Seattle*, 840 P.2d 174, 184 (Wash. 1992) (concluding that where government action "grossly diminishes the value of the Church's principal asset," it "impermissibly burdens [the] right to free exercise of religion" even if it does not make religious observance impossible or impracticable).

2. Not surprisingly, these conflicting definitions have produced directly conflicting results. A prime example is the square conflict between this case and the Ninth Circuit's recent decision in *Guru Nanak*. There the plaintiff, a Sikh religious group, sought a conditional use permit for construction of a Sikh temple on property zoned for low-density residential use. The county planning commission denied the permit based on concerns about increased noise and traffic in the residential neighborhood. 456 F.3d at 982. Guru Nanak then purchased a larger parcel in a rural area zoned for agricultural use and sought a permit for a temple roughly half the size it had previously proposed. *Ibid.* The county attached a number of conditions, including requirements that Guru Nanak include a 25 foot, undeveloped buffer on the north side of the property, keep all ceremonies indoors, and incorporate landscaping. Guru Nanak agreed, but the county again denied its permit application, this time on the ground that the proposed tem-

ple's separation from existing infrastructure could contribute to "leapfrog development." *Id.* at 984.

Expressly rejecting the Seventh Circuit's restrictive "effectively impracticable" test, the Ninth Circuit held that the county had imposed a substantial burden even though it left Guru Nanak free to practice its religion. That was because "[t]he net effect of the County's two denials"—especially in light of the broad reasons given for the denials—"is to shrink the large amount of land theoretically available to Guru Nanak under the Zoning Code to several scattered parcels that the County may or may not ultimately approve." *Id.* at 991-92. In other words, the County had imposed a substantial burden, not because of any impossibility, but because "any future [conditional use permit] applications . . . would be fraught with uncertainty." *Id.* at 990-991.

The result in *Guru Nanak* starkly conflicts with the result below. Vision faced easily as much (if not more) uncertainty as to whether future permit applications would be successful. The only difference is that in *Guru Nanak*, the source of the uncertainty was the County's vague reasons for the permit denials, whereas here the source of uncertainty was overtly hostile maneuvering by the Village—specifically, conditions that pressured Vision to give up core religious practices and the specially targeted Assembly Ordinance passed in the wake of a forcible annexation. These aggressive actions demonstrate the Village's apparent resolve to prevent Vision from ever making a successful permit application. And even if Vision had offered to comply with every new rule concocted by the Village, the Village would *still* have retained discretion to reject the application based on malleable grounds such as "public convenience," "public welfare," or ability "to complete the project as proposed . . . to the satisfaction of the village." Pet. App. 82a (LGZO § 5-11-17(E)). In light of these vague standards, combined with the Village's openly hostile ma-

neuvering and exceedingly broad discretion, Vision's "future [permit] applications" were "fraught with uncertainty" *at least as great* as that faced by Guru Nanak. 456 F.3d at 990-991.[3]

Accordingly, under the Ninth Circuit's application of the term, Vision faced a "substantial burden" on its exercise of religion. And under the Seventh Circuit's "effectively impracticable" test, the burden at issue in *Guru Nanak* would *not* be considered substantial.

Another example of direct conflict is the Fifth Circuit's decision in *Islamic Center of Mississippi, Inc.* v. *City of Starkville*, 840 F.2d 293, 299-303 (5th Cir. 1988). There, the question was whether a city's denial of a special use permit for a mosque placed an undue burden on the religious exercise of a Muslim university group. Although the city claimed that it denied the permit "because of concerns about traffic congestion," and that the group could locate as a matter of right elsewhere in the city or in the adjacent county, the court held that the permit denial "ma[de] a mosque relatively inaccessible within the city limits to Muslims who lack automobile transportation, [thereby] burden[ing] their exercise of religion." *Id.* at 298-99. Vi-

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[3] In other respects too, Vision faced a greater burden than did Guru Nanak. For example, Vision faced conditions on its permit application that were both more onerous and more numerous than those in the Ninth Circuit case. And here the Village went so far as to dictate the number and type of religious services Vision could conduct at its proposed facility and required Vision to seek Village approval for "all other major activities or special events." Tabs 56-57. Thus, Vision was put to the choice, on the one hand, of submitting its core religious practices to direct Village oversight, and on the other, risking the entire permitting process, in which it had already invested years of time and hundreds of thousands of dollars. This is the very type of Hobson's choice this Court has held to be a substantial burden on religious exercise. See *infra* at 18-19 (discussing *Thomas* v. *Review Bd.*, 450 U.S. 707 (1981)).

sion—which has faced outright hostility from the Village, years of delay and expense, multiple permit denials, and multiple rule changes—has faced a significantly greater burden on its exercise of religion than the university group in *Islamic Center*. Thus, the Fifth Circuit's approach also conflicts directly with that of the Seventh Circuit.

3. The Seventh Circuit's approach also conflicts in principle with this Court's own "substantial burden" decisions—*Sherbert* v. *Verner* 374 U.S. 398 (1963), and *Thomas* v. *Review Board*, 450 U.S. 707 (1981)—which are the basis for the "substantial burden" standards in RLUIPA and RFRA, 42 U.S.C. § 2000bb-1, and which still apply to certain free exercise claims after *Employment Division* v. *Smith*, 494 U.S. 872, 884 (1990), including the free exercise claim in this case.[4]

A review of *Sherbert* is instructive because it did not involve government action that even approached making religious practice effectively impracticable, as the Seventh and Second Circuits would require. Instead, it involved a simple denial of unemployment benefits to a Sabbatarian who was fired for refusing to work on Saturday. 374 U.S. at 399-400. Yet this Court squarely rejected the argument

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[4] The zoning ordinance and system of special use permits at issue here fall within the "individualized exemptions" category recognized in *Smith* and *Church of the Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520 (1993), under which strict scrutiny review applies to any law that "represents a system of 'individualized governmental assessment of the reasons for the relevant conduct.'" *Lukumi*, 508 U.S. at 537 (quoting *Smith*, 494 U.S at 884). See *First Covenant Church*, 840 P.2d at 181 (holding that land-use ordinances that "contain mechanisms for individualized exceptions" and "invite individualized assessments" are not generally applicable and require strict scrutiny); *Fraternal Order of Police Newark Lodge No. 12* v. *City of Newark*, 170 F.3d 359, 366 (3d Cir. 1999) (holding that a system in which exemptions are given for secular reasons, but not extended for religious reasons, "must survive heightened scrutiny").

that a financial expense resulting from loss of a government "benefit or privilege" was not a "substantial burden." Instead, this Court observed that even "conditions and qualifications upon governmental privileges and benefits" frequently "have been invalidated because of their *tendency to inhibit* constitutionally protected activity." *Id.* at 406 & n.6 (emphasis added). That is, the substantial burden requirement meant not that the plaintiff must show that the regulation made her religious observance "effectively impracticable," but simply that the rule put "pressure upon her to forgo [a religious] practice." *Id.* at 404.

The same was true in *Thomas* v. *Review Board*, 450 U.S. 707 (1981), another case involving the denial of unemployment benefits to an individual who balked at performing work duties that conflicted with his religious beliefs. The Court held that "[w]here the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists." *Id.* at 717-18. And even though, in such circumstances, "the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial." *Id.* at 718.

This type of burden—pressure to modify behavior because the government conditions an important benefit on forgoing religiously mandated conduct—is precisely what Vision faced when the Village conditioned approval of its special use permit on Vision's cutting back the number and types of religious activities and conducting others only with Village approval. This pressure alone—quite apart from the years of delay and expense and the outright hostility—is sufficient to establish a substantial burden under *Sherbert* and *Thomas*. But the Seventh Circuit, while acknowledging that this pressure was "troublesome," Pet. App. 66a, nevertheless refused to find a substantial bur-

den because the Village did not render religious exercise *impossible*.[5] This holding thus presents a significant conflict in principle with *Sherbert* and *Thomas*.

In sum, the Seventh Circuit's "effectively impracticable" standard departs sharply from the approach taken by a number of circuit and state courts and from this Court's traditional understanding of "substantial burden." This Court's review is needed to clear up this confusion and to provide the protection that Congress enacted in RLUIPA.

II. Review Is Needed To Provide Guidance On When A Regulation Treats A Religious Use On "Less Than Equal Terms" Than A Nonreligious Use.

This case also provides the Court with an opportunity to resolve substantial tension between decisions of the Seventh and Eleventh Circuits interpreting RLUIPA's equal terms provision. That provision makes it unlawful to "impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." 42 U.S.C. § 2000cc(b)(1).

1. Vision argued below that the Village treated it on "less than equal terms" by, among other things, approving the similarly situated (and much larger) school complex across the street. The Seventh Circuit, however, concluded that Vision and the schools were not similarly situ-

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[5] The Seventh Circuit's standard also requires that a land use regulation "necessarily bears *direct, primary, and fundamental* responsibility for rendering religious exercise. . . . effectively impracticable." Pet. App. 62a-63a (emphasis added). But *Sherbert* and *Thomas* held that governmental action can substantially burden religion even when the burden is "only indirect." *Sherbert*, 374 U.S. at 404; see also *Thomas*, 450 U.S. at 718 ("While the compulsion *may be indirect*, the infringement upon free exercise is *nonetheless substantial*") (emphasis added). The Seventh Circuit ignored these precedents as well.

ated because Vision, unlike the schools, was subject to the Ordinance: "the fact that Vision and the elementary schools were *subject to different standards* because of the year in which their special use applications were considered compels the conclusion that there was no unequal treatment." Pet. App. 74a (emphasis added).

But the fact that Vision and the public schools were "subject to different standards" is not an appropriate ground for distinguishing the two—rather, it is precisely the type of unequal treatment that RLUIPA prohibits. RLUIPA requires the court to point to a factual difference between religious and nonreligious assemblies—a difference in "community impact"—that would justify differential legal treatment. *Konikov* v. *Orange County*, 410 F.3d 1317, 1327 (11th Cir. 2005) (examining the factual record and determining that differential treatment was not justified because assemblies had a "comparable community impact") (emphasis omitted).

If, as the Seventh Circuit concluded, a different legal standard is its own justification for different treatment, RLUIPA's equal terms provision is practically meaningless. In that case, a land-use authority can always escape that requirement simply by adopting a new legal standard tailor-made for the religious use at issue.

2. The Seventh Circuit's interpretation is in significant tension with the Eleventh Circuit's approach (and results) in *Konikov* and *Midrash*. In *Konikov*, a rabbi challenged the application of a municipal zoning ordinance requiring religious and social organizations located in a particular district to apply for a special permit. Although on its face the ordinance treated religious and nonreligious organizations equally, in practice the city required religious groups, but not social groups, to obtain a permit. The Eleventh Circuit held that treating groups with "comparable community impact" differently, even under a facially neutral ordinance, violated RLUIPA. *Ibid.*

This is precisely what the Village did here. Both Vision and the school district applied for annexation, rezoning, and a special use permit in order to begin their building projects. The city approved the school district's application, but denied Vision's, even though it was uncontested that the public school complex would have a much larger "community impact" than the church. This constitutes treatment on "less than equal terms" under the Eleventh Circuit's analysis in *Konikov*.[6]

Although the Eleventh Circuit has not squarely repudiated the Seventh Circuit's view that a land-use authority can escape the equal terms requirement by subjecting religious and non-religious uses to different legal regimes, any such notion is plainly inconsistent in principle with the Eleventh Circuit's "comparable impacts" analysis. Only this Court can resolve this disagreement between two circuits governing substantial portions of the Nation.

III. Review Is Needed To Clarify The Standard For Assessing Equal Protection Challenges To Laws That Discriminate Against And Among Religious Uses.

This case also provides the Court with an opportunity to resolve a circuit conflict on a significant open question in this Court's equal protection jurisprudence after *City of Cleburne* v. *Cleburne Living Center*, 473 U.S. 432 (1985).

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[6] The decision below also stands in tension with the Eleventh Circuit's decision in *Midrash*. There, the court held that a zoning ordinance permitting private clubs and lodges in business districts, but excluding religious assemblies, violates RLUIPA's equal terms provision. 366 F.3d at 1231. Here, similarly, the Village freely permits restaurants, tearooms, taverns, and health clubs in one zoning district, but excludes religious assemblies as permitted uses in all districts. Moreover, the Ordinance applies to religious organizations but not to public schools. Both of these anomalies constitute treatment on "less than equal terms" under the *Midrash* analysis.

1. *Cleburne* has generated significant confusion on the question whether religious land uses—and other sensitive uses—are subject to some form of heightened scrutiny rather than true rational basis review. In *Cleburne*, the Court *said* it was applying traditional rational-basis review to a land-use restriction on homes for the mentally retarded, but, as Judge Posner has noted, actually employed a "more careful, realistic, skeptical" form of review. *Civil Liberties for Urban Believers* v. *City of Chicago*, 342 F.3d 752, 769 (7th Cir. 2003) (Posner, J., dissenting) ("*CLUB*"). This has left the lower courts wondering: Do this Court's equal protection holdings teach that "discrimination against sensitive uses is to be given more careful, realistic, skeptical scrutiny by the courts than discrimination against purely commercial activities"? *Ibid.* As Judge Posner recognized in *CLUB*, the lower courts are in conflict on this critical issue. *Ibid.*

On one side of the conflict, the court below (following its earlier decision in *CLUB*) applied bare rational basis review to the Village's denial of Vision's special use application under the Assembly Ordinance: "Vision must demonstrate governmental action *wholly impossible* to relate to legitimate government objectives," the Court stated. Pet. App. 70a (emphasis added) (citation omitted). Applying this standard, the court held that the Village's actions were rational because "[a]t the time that Village addressed Vision's special use application it already had passed the Assembly Ordinance." *Id.* at 71a-72a. When Vision failed to comply with the Ordinance, the Village acted rationally—i.e., in furtherance of the Ordinance's goals—by denying Vision's application. *Ibid.*

This approach conflicts with that of the Eighth, Third, and Fourth Circuits. For example, in *Cornerstone Bible Church* v. *City of Hastings*, 948 F.2d 464, 471-472 (8th Cir. 1991), a city ordinance excluded churches from the city's central business district, but gave open access to other non-commercial entities such as Alcoholics Anonymous, the American Legion, and the Masonic Lodge. The court

held that the city had "failed to support its exclusion of the Church with any justification beyond ... conclusory statements in the affidavits of the city planners." *Ibid.* In reaching this conclusion, the court invoked *Cleburne*, not for its description of rational basis scrutiny, but for its "analysis," which "focused on whether [the use at issue] 'would threaten legitimate interests of the city in a way that other permitted uses ... would not.'" *Id.* at 471 (quoting *Cleburne*, 473 U.S. at 448). Unlike the court below, then, the Eighth Circuit "follow[ed] what the Supreme Court does and not just what it says it is doing." *CLUB*, 342 F.3d at 769 (Posner, dissenting).

Had the Seventh Circuit followed the Eighth Circuit's approach, it would have held that the Village's application of the Assembly Ordinance violated equal protection. After all, there can be no serious argument that a 99,000 square-foot church, with a total of 123,483 square feet of impervious surfaces, "threaten[s] legitimate interests" of the Village "in a way that [a] [172,000 square-foot school, with 377,802 square feet of impervious surfaces] does not." *Cleburne*, 473 U.S. at 448. The Village's forcible annexation and rezoning of Vision's property and sharp about-face on space limits bear all the hallmarks of irrationality—a conclusion verified by the Village's own admission that the Assembly Ordinance was targeted at Vision. Appellant's Br., Short App. at 48. Under *Cornerstone Bible*, the Eighth Circuit would not allow this.

Nor would the Third Circuit, which, like the Eighth Circuit, requires more than bare rational basis review. For example, in *Congregation Kol Ami* v. *Abington Township*, 309 F.3d 120 (3d Cir. 2002), the Third Circuit considered a zoning ordinance that, much like the Assembly Ordinance and the ordinance in *Cornerstone Bible*, treated churches differently than ostensibly similar entities. *Id.* at 126-127. The court noted that this Court "has not yet directly addressed the constitutional incidents of municipal restrictions on [the] use of land by religious institutions." *Id.* at 133. But the court nevertheless observed

that, although a version of rational basis review is generally applied in cases challenging *liberty* restrictions imposed by a land-use authority, review in cases involving *religion* must be "meaningful" and alert for "animus or other improper motive." *Id.* at 133, 135.

Applying this heightened equal protection standard, the Third Circuit held that "the initial burden on the complaining party" is "to demonstrate that it is 'similarly situated' to an entity that is being treated differently . . . perhaps by citing to the different impact that such entities may have on the asserted goal of the zoning plan." *Id.* at 137. To be "similarly situated," the court explained, is to be "similar in 'kind,' to the uses currently permitted." *Id.* at 125. As to the *justification* for differential treatment, the Third Circuit used a sliding scale. "Clearly, as the similarity of use wanes," the court explained, "so too the inequality in treatment will be increasingly tolerated under the law." *Id.* at 142. The court thus remanded for a finding of whether the congregation was similarly situated to another, favored entity. *Id.* at 144.

The decision below conflicts with *Kol Ami*. Here the Seventh Circuit refused even to consider whether Vision and other churches are situated similarly to schools. See Pet. App. 71a-72a. It also failed to perform any assessment of the Village's justification for the Assembly Ordinance in light of the Village's stated objectives. Instead, it *assumed* the validity of the Ordinance and assessed whether denying Vision's application was a rational way to achieve the Ordinance's goals. *Id.* at 72a. But that is tautological. Had the court below followed the Third Circuit's approach, it would have applied "meaningful review" to the Ordinance and been "alert" to the Village's arbitrary and capricious maneuvering. 309 F.3d at 135 (citing *Cleburne*, 473 U.S. at 446-447).

The decision below also conflicts with the Fourth Circuit's decision in *Marks* v. *Chesapeake*, 883 F.2d 308, 311 (4th Cir. 1989), which involved the denial of a special use permit to a palm reader. *Marks* ruled that whether the

sensitive use is a product of "'inaccurate' or 'stereotypic' fear of the mentally retarded," as in *Cleburne*, of "women," "or, as alleged here, those who practice rituals thought by some to be heretical, the rule remains the same." *Ibid.* That is, courts must probe for impermissible endorsement of unspoken bias against constitutionally protected interests. And under *Cleburne*, "denial of a permit is arbitrary where the decision to deny was not related to any substantial zoning interest, but was instead motivated principally by the heavy opposition of neighbors expressed at a public hearing." 883 F.2d at 311 n.3 (citation, quotations, alterations omitted).

That is what occurred here. Following unusually heated public hearings, with hostility from local residents and even comments with racial overtones, the Village placed some 50 conditions on Vision's proposal for annexation. Some of these were "poison pills," such as limiting the number and type of weekly services Vision could hold and requiring Vision to ask the Village for permission to hold extra services. Others were onerous and invasive, such as requiring 85% of the property to be devoted to open space (25% more than the Village zoning ordinance required) and removing the playing field, youth sanctuary, and day care facility—effectively eliminating Vision's plans for a small religious pre-school. Still other requirements were ambiguous but arguably rooted in religious prejudice—most dramatically, the demand that Vision make its building more like a "nice traditional country church." Then, after forcibly annexing and rezoning Vision's land just two weeks before Vision's plan would become eligible for approval by Lake County, the Village enacted the Assembly Ordinance obviously designed to render Vision's smallest proposal not quite small enough. This litany of discrimination is the sort of situation that cries out for the more careful review commended in *Marks*, *Kol Ami*, *Cornerstone Bible*, and Judge Posner's dissent in *CLUB*, rather than the bare rational basis review applied below.

2. The Seventh Circuit's standard also stands in significant tension with *Cleburne* itself, as Judge Posner pointed out. To be sure, the say-one-thing-and-do-another approach in *Cleburne* makes it difficult ever to say a decision actually "conflicts" with *Cleburne*. That is why there is so much confusion and division among the lower courts. Nevertheless, the question "clearly posed" in *Cleburne* is the same as the question posed by the Assembly Ordinance here: "may the [Village] require [a] permit for this facility when other [comparable] facilities are freely permitted." 473 U.S. at 448. And in *Cleburne*, whatever *label* the Court gave to its analysis, the Court answered that question by weighing each of the city's proffered justifications, including the city's argument that its "ordinance is aimed at avoiding concentration of the population and at lessening congestion of the streets." *Id.* at 450. The Court rejected this argument because it failed to explain why similar types of group homes and health facilities could locate in the area without a permit. *Ibid.*

Application of these principles likewise requires rejection of the justifications offered by the Village below. It has never explained why a major public schools complex—located *across the street* from Vision—received discretionary approval to locate in the Village while Vision did not. Nor has the Village ever explained why Vision had to satisfy 50 conditions for annexation, including severe limitations on the type and number of services, when the school district did not. Under any fair application of *Cleburne*, the Village's failure to provide a reasoned explanation for these differences renders its actions unconstitutional. The decision below thus conflicts in principle with *Cleburne*.

Only this Court can clear up the lower courts' confusion about the meaning of *Cleburne* and its proper application to religious land-use issues. This case provides an excellent opportunity to do just that.

IV. The Questions Are Of Immense Practical Importance To Churches, Local Governments, and Federal Policy.

The practical importance of the questions presented also militates strongly in favor of review. Simply put, zoning conflicts between churches and local governments have become one of the most important—if not *the* most important—church-state issue of our time.

1. Before passing RLUIPA, Congress assembled "massive evidence" of a nationwide problem in which "[c]hurches in general, and new, small, or unfamiliar churches in particular, are frequently discriminated against on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation." 146 Cong. Rec. S7774, S7774 (daily ed. July 27, 2000) (joint statement of Senators Hatch and Kennedy) ("Joint Statement"). Hearings provided "a substantial record of evidence indicating a widespread pattern of religious discrimination in land-use regulation"—discrimination that especially disfavors minorities, such as the Korean American congregation affected by the Village's actions here. H.R. Rep. No. 106-219, at 18 (1999).

Religious communities, moreover, are often *deliberately* burdened by "brash display[s] of religious discrimination." H.R. Rep. No. 106-219, at 22 (1999). In one notorious case, zoning officials required a new Orthodox synagogue to include in its building plan a large number of parking spaces, even though members of the synagogue—like many observant Jews—walked to services. Once the synagogue agreed to construct the unneeded parking spaces, the city denied the permit anyway, citing traffic problems associated with the number of cars for which the parking lot was designed. See *Orthodox Minhan* v. *Cheltenham Twp. Zoning Hearing Bd.*, 552 A.2d 772, 773 (Pa. Commw. Ct. 1989), cited in H.R. Rep. No. 106-219, at 23 & n.109. Congressional testimony established that such dis-

crimination was not isolated but rather was a nationwide problem. Joint Statement at S7775; H.R. Rep. 106-219, at 24 ("Conflicts between religious organizations and land use regulators are much more common than reported cases would indicate").

Such practical considerations provide an additional, powerful reason for plenary review. Indeed, protecting minority religions from discrimination in the land-use context has been an important federal policy ever since RLUIPA's passage and is actively pursued by the United States Department of Justice today.[7]

2. That policy reflects the reality that land-use issues are often at the heart of religious freedom. In most religious traditions, a place to gather, worship, and perform religious ministries is indispensable to religious exercise. "The physical embodiment of a faith group—its church—represents its ability to speak, assemble, and worship together: three fundamental rights embodied in the First Amendment." Roman P. Storzer & Anthony R. Picarello, Jr., *The Religious Land Use and Institutionalized Persons Act of 2000: A Constitutional Response to Unconstitutional Zoning Practices*, 9 Geo. Mason L. Rev. 929, 945 (2001).

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[7] The Department has launched a special initiative to protect religious freedom by, among other things, vigorously enforcing RLUIPA. From 2001-2006, the Department reviewed 118 RLUIPA matters, filed four of its own lawsuits under RLUIPA, filed eight amicus briefs in federal appellate cases involving RLUIPA, and intervened to defend RLUIPA's constitutionality 29 times. U.S. Department of Justice, *Report on Enforcement of Laws Protecting Religious Freedom: Fiscal Years 2001-2006* 25-29 (2007) (available online at http://www.firstfreedom.gov/-report/report.pdf). Indeed, the Department has been actively involved in many of the cases cited in this petition, and filed amicus briefs supporting the results in *Guru Nanak* and *Midrash*, the two cases that explicitly rejected the Seventh Circuit's definition of "substantial burden." *Ibid*

Indeed, as Congress found in enacting RLUIPA, "[c]hurches and synagogues cannot function without a physical space adequate to their needs and consistent with their theological requirements." Joint Statement at S7774. Accordingly, land-use constraints on religious meeting spaces often impose severe religious hardships.

Even where those constraints do not make religious practice impossible—as the Seventh Circuit requires—they often create substantial burdens. For example, inadequate seating inevitably forces some adherents to stand in foyers and hallways, precluding direct participation in worship services. Evangelism and outreach are severely hampered when there is no room for new members. Religious teaching and counseling suffer when there is no space for contemplation or instruction.

Similarly, the design and arrangement of a religious space is "freighted with religious meaning," with certain liturgies requiring particular building designs. *First Covenant Church*, 840 P.2d at 182. Features such as the sanctuary, altar, steeple, counseling rooms, and classrooms may all be critical to religious practice yet be substantially affected or impeded by zoning regimes.

3. Finally, a decision by this Court definitively establishing the legal standards by which land-use decisions are to be judged under RLUIPA and the First Amendment will very likely reduce the litigation burdens on both religious bodies and local governments. Uncertainty in any area of the law breeds litigation. And that is particularly true in this area, which is now governed in large part by federal statute, and in which, seven years after that statute's passage, lower courts are still deeply divided over the applicable legal standards. Definitive standards will allow churches and local governments to more easily predict the outcome of litigation and, for that reason, more readily fashion compromises acceptable to both sides.

In sum, religious communities (and particularly those outside the mainstream) regularly suffer from severe constraints on religious practice as a result of both deliberate and inadvertent burdens on their exercise of religion. Although both RLIUPA and the Constitution are designed to ameliorate such problems, lower courts have interpreted these provisions inconsistently, in some cases rendering important legal protections largely ineffective, while at the same time spawning unnecessary litigation over their application. Only this Court can provide consistent standards for evaluating under federal law the many land-use decisions that affect religious institutions and their members nationally.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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